

PARSONS BEHLE & LATIMER
Erik A. Christiansen (USB 7372)
Benjamin D. Perkins (USB 18503)
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
EChristiansen@parsonsbehle.com
BPerkins@parsonsbehle.com

VENABLE LLP
Sarah E. Diamond (CA SBN 281162) (*Admitted Pro Hac Vice*)
2049 Century Park East, Suite 2300
Los Angeles, CA 90067
Telephone: (310) 229-9900
Facsimile: (310) 229-9901
SEDiamond@venable.com

***Attorneys for Plaintiffs Capana Swiss Advisors AG
and AmeriMark Automotive AG***

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

CAPANA SWISS ADVISORS AG, a Swiss
corporation; AMERIMARK
AUTOMOTIVE AG, a Swiss corporation,

Plaintiffs,

vs.

RYMARK, INC., a Utah corporation;
NICHOLAS THAYNE MARKOSIAN, an
individual; JOHN KIRKLAND, an individual;
and VICKY SMALL, an individual,

Defendants.

**REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR LEAVE TO AMEND THE
VERIFIED COMPLAINT**

Case No. 2:23-cv-00467

Judge: Hon. Robert J. Shelby
Magistrate Judge: Hon. Cecilia M. Romero

Plaintiffs Capana Swiss Advisors AG (“Capana”) and AmeriMark Automotive AG (“AmeriMark Automotive” and together with Capana “Plaintiffs”) respectfully submit this Reply in Support (“Reply”) of their Motion for Leave to Amend their Verified Complaint (the “Motion”).

INTRODUCTION

Defendants’ Opposition to Plaintiffs’ Motion (the “Opposition”) stems from Defendants’ apparent misunderstanding of the Federal Rules of Civil Procedure and the timing of Plaintiffs’ Motion. Far from being “illogical and moot,” the Motion was necessary because Plaintiffs filed their Motion after the twenty-one (21) day period during which they could amend their complaint as a matter of right pursuant to Fed. R. Civ. P. 15(a). In any event, Defendants’ Opposition states that they do not oppose Plaintiffs’ request to file the proposed Verified First Amended Complaint (the “Amended Complaint”). Accordingly, Plaintiffs have filed the Amended Complaint contemporaneously with this Reply.

ARGUMENT

On September 15, 2023, Plaintiffs filed their Motion seeking to amend their Verified Complaint (the “Original Complaint”) after the statutory time to amend as a matter of course had passed. Federal Rule of Civil Procedure 15(a)(1) allows a party to amend their pleading once as a matter of course: “(A) 21 days after serving it; or (B) ... 21 days after service of a responsive pleading.” Fed. R. Civ. P. 15(a)(1)(A), (B). Plaintiffs filed their Motion more than twenty-one (21) days after Defendants accepted service of the Original Complaint on July 19, 2023, [ECF No. 3], but before a responsive pleading was filed. Thus, Plaintiffs were required to seek leave in order to amend under Federal Rule of Civil Procedure 15(a)(2).

After Plaintiffs filed the Motion, Defendants filed their Answer on September 18, 2023. [ECF No. 11]. Defendants appear to concede that under Rule 15(a)(1)(B), Plaintiffs may now file their Amended Complaint as a matter of course. Fed. R. Civ. P. 15(a)(1)(B). As such, Plaintiffs have filed their Amended Complaint contemporaneously with this Reply,

CONCLUSION

Because Defendants agree that Plaintiffs may file their Amended Complaint as a matter of course, Plaintiffs have filed their Amended Complaint and request that it be deemed operative.

DATED this 10th day of October, 2023.

PARSONS BEHLE & LATIMER

/s/ Erik A. Christiansen

Erik A. Christiansen

Benjamin D. Perkins

VENABLE LLP

Sarah E. Diamond (*Admitted Pro Hac Vice*)

*Attorneys for Plaintiffs Capana Swiss
Advisors AG and AmeriMark
Automotive AG*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of October 2023, I filed the foregoing
**REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE
VERIFIED COMPLAINT** via the Court's CM/ECF system, which provided notice of such
filing to all counsel of record.

/s/ Michelle Orton-Brown